

ANSWER TO PERMANENT GUARDIANSHIP INSTRUCTION PACKET

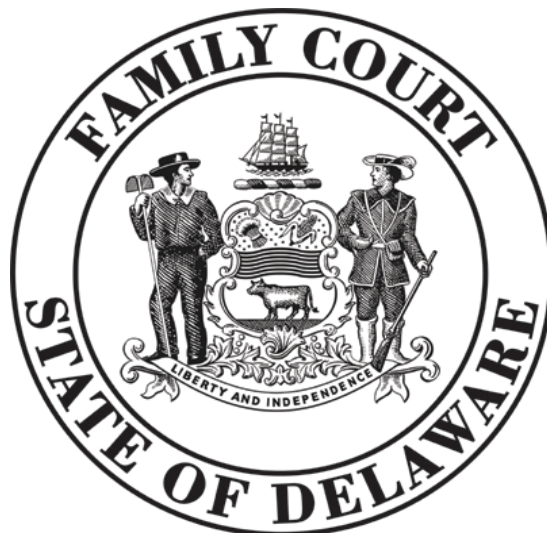


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ANSWER TO PERMANENT GUARDIANSHIP INSTRUCTION PACKET

Use the **Answer to Permanent Guardianship Packet** **ONLY** when:

- ☐ You have been named as the Respondent in a Petition for Permanent Guardianship.

FILING AN ANSWER IS YOUR WAY OF TELLING YOUR SIDE OF THE STORY TO THE COURT. The Court will use the information in your Answer when deciding whether or not the Petitioner should be granted permanent guardianship. If you **do not** file an Answer, the Court will not know how you feel regarding the Petition for Permanent Guardianship. It is **VERY IMPORTANT** that you file an Answer, so the Court knows how you feel about the permanent guardianship petition.

NOTE: If you agree that the Petitioner should be granted Permanent Guardianship, you need to fill out the Consent Form. This is explained on page 13 and a sample consent form can be found on pages 30-33.

HOW TO USE THE PACKET

This packet contains general information about the process of filing an Answer to a Petition for Permanent Guardianship, basic instructions on how to complete the Court forms you must file, and samples of the completed Court forms.

You should read the instructions and sample forms carefully **before** filling out any forms. **ONLY FILE THE FORMS THAT YOU FILL OUT.** The sample

forms included in this Instruction Packet are simply to help you understand how to fill out the real forms in the Forms Packet.

YOU DO NOT HAVE TO COMPLETE ALL THE SECTIONS AT ONCE.

For example, you do not have to file the forms in Section 2 at the same time as the forms in Section 1. Read the information carefully to ensure you know what you are supposed to do and when.

Please look for the shaded written instructions and the following symbols throughout the packet. They will help guide you.



READ THIS SECTION CAREFULLY



THIS DOCUMENT MUST BE FILED



FILL IN THE BLANKS OR WRITE INFORMATION HERE



YOU DO NOT HAVE TO TAKE THESE STEPS NOW.



TIPS AND REMINDERS ...

- ✓ Make sure to read any **Answers to Frequently Asked Questions** on Permanent Guardianship located in the Resource Center in each Courthouse. They will help you to better understand the Permanent Guardianship process.
- ✓ Remember who is the Petitioner and who is the Respondent.
 - The **PETITIONER** is the person who filed the Petition for Permanent Guardianship.
 - The **RESPONDENT** is the person replying (responding) to the Petition, in other words, you.
- ✓ Remember that just because you fill out the forms correctly does not necessarily mean the Court will give you (grant) what you want. It is up to you at the court hearing to prove why the Court should give you what you want.
- ✓ Representing yourself may take a lot of time, may be difficult and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. **If at any point throughout the Court process you are not sure about representing yourself, you should talk to an attorney.**
- ✓ Please remember that **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE**. Should you have a question about what options you have or what you should do, you should talk to an attorney. Just because you talk to an attorney does not necessarily mean that you must hire that attorney to represent you. Ask the attorney if he/she is willing to meet with you and answer your questions without having to hire that attorney

for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.

- ✓ If you would like assistance in finding an attorney, you can call the **Lawyer Referral Service** in New Castle County, 302-478-8850, and in Kent and Sussex Counties, 1-800-773-0606. (You may call the same telephone numbers and ask for the **Legal Help Link** to find out if you qualify for free legal assistance.) You also can refer to the **Attorney Roster** that is located in the Family Court Resource Centers. The Attorney Roster is a listing of some of the attorneys who practice family law in Delaware and includes information about how to contact the attorneys and what fees the attorneys charge.
- ✓ Always bring your photo identification with you (such as your driver's license, or a state-issued photo identification card) whenever you get a Court form notarized.
- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE VERY EXPENSIVE.**

PLEASE READ AND REMEMBER THESE IMPORTANT TIPS

REMEMBER

- **Keep a copy of every document and court paper.**
- **Keep all notes, documents and court papers together and organized in a folder with the most recent papers on top.**
- **Bring the folder with your papers with you every time you go to Court.**
- **When you file a document with the Court, bring the required number of copies of each paper and an extra copy for you to have “clocked-in.” Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document. You may make copies at the Resource and Self-Help Centers but there is a small fee.**
- **When you complete a document or form for filing with the Court, always include the full case name and file and petition numbers (if there are any).**
- **When you must mail something, we suggest that you use regular mail AND “certified mail, return receipt requested” so that you have proof that the other party received the envelope. If you cannot afford to pay for “certified mail” we suggest you get a “certificate of mailing” at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource and Self-Help Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.**

PERMANENT GUARDIANSHIP



The Definition of Permanent Guardianship

The intent of Permanent Guardianship is to create a relationship between a child and a caretaker which is permanent and self-sustaining and which creates a permanent family for the child without having to terminate the parental rights of the child's parents.

- Only a blood relative or foster parent(s) of the child may serve as a Permanent Guardian.

Included in most Permanent Guardianship Orders is an Order for Custody. Therefore, assuming Custody is also granted, a Permanent Guardian may exercise the same powers, rights and duties respecting the care, maintenance and treatment of the child as a parent would, except that the Permanent Guardian of the child is not liable to third persons for acts of the child solely by reason of the Permanent Guardianship relationship. The Court also has the right to limit any of the powers and duties granted to the Permanent Guardian.



The Responsibilities of a Permanent Guardian

Assuming the Court places no limitations in the Permanent Guardianship Order, the Permanent Guardian will be responsible for providing for the child both physically and emotionally. The Permanent Guardian must provide a healthy and safe living environment, an education and all the necessary and appropriate medical treatment, including but not limited to medical, dental and psychiatric care. Furthermore, the Permanent Guardian will be responsible for making the following decisions:

- Education;
- Travel;
- Medical treatment;
- Right to marry or enlist in the military;

- Representation in legal matters;
- Welfare and upbringing; **AND**
- Where the child will live.



The Responsibilities of the Child's Parent after Permanent Guardianship is Granted

Because a parent's parental rights are not terminated when a non-parent is given permanent guardianship, the Court will determine the following:

- How much, if any, contact the parent(s) should have with the child after the Guardianship is granted;
- How much, if any, information about the child the Guardian should share with the parent(s); **AND**
- A visitation schedule, if appropriate, so that the parent(s) may spend time with the child.



Once a Permanent Guardianship is granted, a parent may not petition the Court to change or terminate the permanent guardianship. *(For more information, see page 29).*

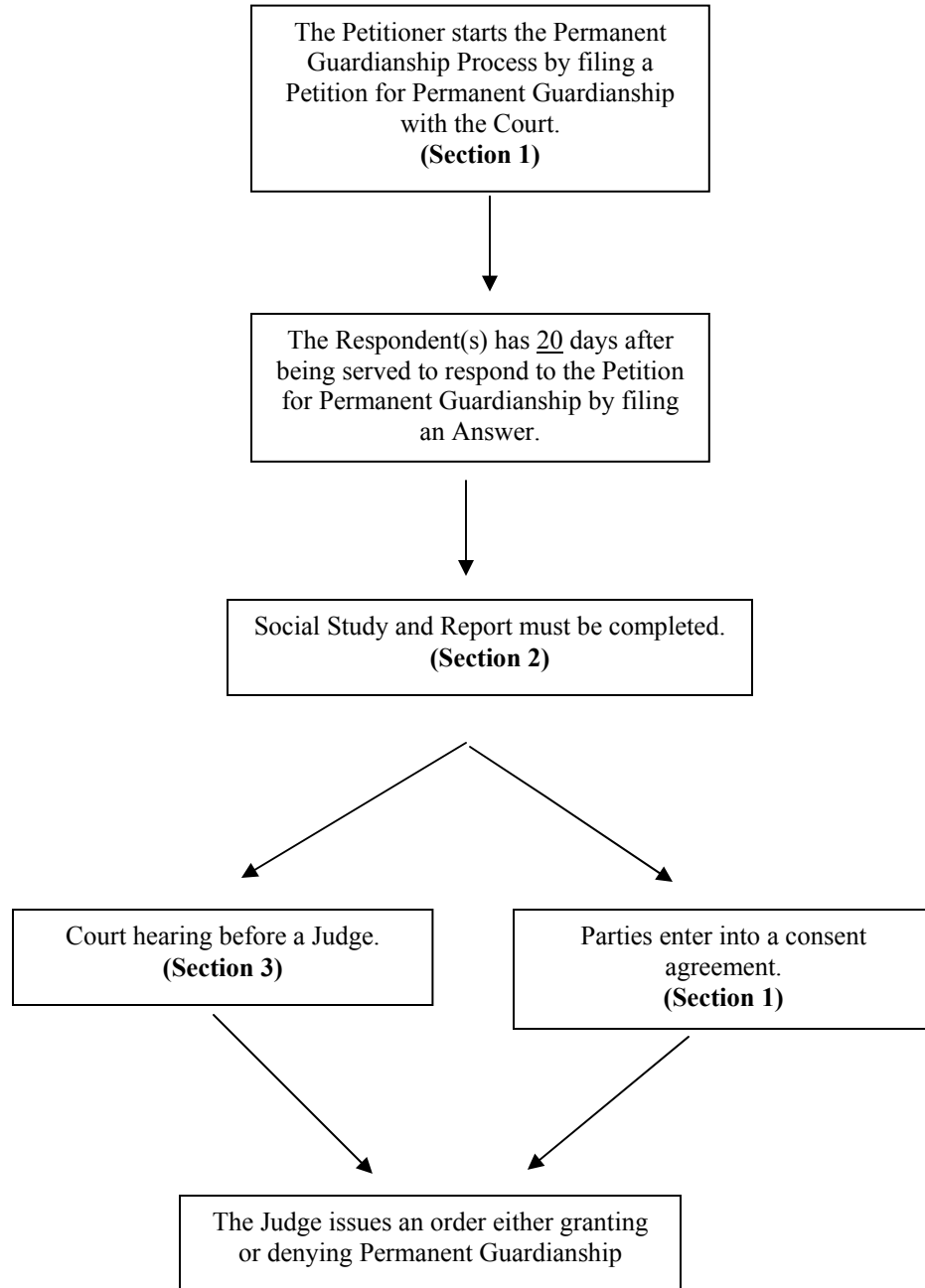


In addition, the child will continue to have the right to inherit from his/her parent(s) and the parent(s) will continue to have the right to inherit from the child. If the Permanent Guardian wishes to have the child inherit from him/her, then the Permanent Guardian must state that desire in a will. For more information on wills and inheritance rights, you should talk to an attorney. Wills and inheritance rights are not handled in Family Court.

The parent(s) may have to continue to provide financial support to the child. In other words, the parents may be required to pay child support to the guardian. Child support is handled in a separate proceeding. If the Court

grants the Petitioner permanent guardianship, the Petitioner must file a separate Petition for Child Support in order for the Court to consider their request for child support.

PERMANENT GUARDIANSHIP PROCESS



SECTION 1

STARTING THE PERMANENT GUARDIANSHIP

PROCESS



After the Petitioner files a Petition for Permanent Guardianship, you will be **served** with notice of the petition. This means that you will receive a **Summons** (a Court document explaining your rights and responsibilities) and **copies** of the petition and any other paperwork the Petitioner filed. Service can be accomplished in the following ways:

- You can be personally served. This means that a person designated by the Court will hand the papers to you directly at your home or your job.
- You can be served by mail. This means the papers will be mailed to you by certified mail.
- You can be served by publication which means the Petitioner must publish notice of the Petition for Permanent Guardianship in a local newspaper. If you read a notice in the newspaper naming you as a Respondent, you must come to Family Court and obtain copies of all the papers that have been filed by the Petitioner.

Regardless of how you receive notice of the petition, it is **VERY IMPORTANT** to read all documents **carefully** so you can properly respond to the allegations in the Petition for Permanent Guardianship.



The Petitioner can only file for Permanent Guardianship if the jurisdictional requirements on the next page are met. If the statements on the following page are not true, you should request that the Court dismiss the Petition for Permanent Guardianship. Please see page (?) for information on how to file a Motion to Dismiss.

- ☐ There is **NO** current Permanent Guardianship Order in place in Delaware or anywhere else. (If there is an existing Permanent Guardianship Order regarding the child and you want to **change the Order**, see page ?); **AND**
- ☐ The child had been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** the Petitioner filed the Petition for Guardianship. (There are exceptions to this 6 month requirement. If the child has not lived in Delaware for at least 6 months, talk to an attorney to see if an exception applies in your situation.); **AND**
- ☐ The Petitioner is at least 18 years of age and is not a parent of the child; **AND**
- ☐ The Petitioner is a blood relative or foster parent of the child.



To respond to the Petition for Permanent Guardianship, you **MUST** file the **ORIGINAL** with the Court and mail **ONE (1) COPY** of each form below to the Petitioner **within 20** days of receiving the Petition:



Answer form. (file one original and mail one copy to the Petitioner)

- A Sample Answer may be found on page 17.
- In your Answer you may do the following:
 - **Admit** (you agree the statement is true) or **deny** (you believe the statement is false) any statements made by the Petitioner in the Petition for Permanent Guardianship. In the Petition, the Petitioner is asked to state (on page 3) why the child is dependent or neglected. You should either admit or deny these statements. Also, the Petitioner was asked to select the

grounds for Permanent Guardianship (on pages 5-7 of the Petition). You should admit or deny each of the grounds that the Petitioner selected. If you deny the statement, explain to the Court **why** the Petitioner's statement is not true. **If you do not respond to a statement, the Court will assume you agree that the statement is true.** If you believe a statement is false, you **must deny** it.

- When responding to the Petition for Permanent Guardianship, you want to give the Court information so that it can decide why the child is not **dependent or neglected**.
 - A child is **dependent** when a parent is **unable** to provide adequate care for the child.
 - A child is **neglected** when a parent has the ability to care for the child, but **does not** or **will not** provide adequate care.
- You also want to give the Court information about why the Grounds for Permanent Guardianship are not met. The Grounds are located on pages 5-7 of the Petition for Permanent Guardianship (see appendix "A" of this booklet).
- If you need more space to write, you may attach additional pages to the Answer form. Be sure to state on the form that you have attached more pages, so the Court and the Petitioner will know to look for additional information. Also, number each additional page that you attach by writing the page number at the bottom of the page.
- You must sign your Answer in the presence of a notary public or authorized Court staff.

BELOW ARE OPTIONAL FORMS

ONLY file the following forms if the situation applies to you.

If the jurisdictional requirements on page 11 have not been met, file:



Motion to Dismiss *(file original and one copy)*

- A sample form may be found on page 19.
- On this form, you will ask the Court to dismiss the Petition for Permanent Guardianship. You **MUST** explain which **specific** jurisdictional requirement was not met.
- When you file the Motion to Dismiss, you must also file a **Notice of Motion** form and a blank **Order form**.
- The Motion form, the Notice of Motion form and the blank Order form are not included in the Forms Packet. They are available in the Resource Centers located in each courthouse and on the Family Court website.

If you and the Petitioner agree on the permanent guardianship, file:



Consent Order-Permanent Guardian of the Person *(file original)*

- On this form you will describe for the Court the following things:
 - Who will have Guardianship of the child
 - Where the child will be living,
 - Whether the parent(s) will have visitation with the child, and
 - What the visitation schedule will be.
- When describing the visitation schedule, be as **specific** as possible. Explain the places, dates and times that visitation will occur. Also, explain to the Court who will be responsible for driving


the child to and from the visitations. Avoid agreements that simply state that “visitation shall be by mutual agreement of the parties.” While this may make it easier for you and the Petitioner to reach an agreement now, it gives you no guidance in how visitation will occur should you and the Petitioner be unable to reach a mutual agreement regarding visitation at a later date. It may be better to decide on the details of visitation now, rather than have to come back to Court to resolve your differences in the future. For more information you may refer to the Visitation Overview located in the Resource Center.


- You and the Petitioner must both sign and have notarized the Consent Order.
- Before you file the Consent Order, you and the Petitioner **may** have to meet with a court employee to review the terms of your agreement.
- Once you have filed your agreement with the Court, it will be forwarded to a Judicial Officer who will review your agreement. If the Judicial Officer finds that the agreement is in the best interest of the child, then he/she will sign the agreement and it will become a court order, called a **Consent Order**.
- Once the Judicial Officer signs the Consent Order, it is a court order and you and the Petitioner **MUST** follow the instructions in the Order. The Court will mail a copy of the signed order to you and the Petitioner.
- If circumstances change in the future, you may be able to change the terms of the Consent Order by filing to modify guardianship. See page 29 for more information.

If Respondent is in the military, file:

 **Waiver of Rights under the Servicemembers' Civil Relief Act** (*file one original and one copy*).

- A sample may be found on page 23.
- **ONLY** file this form if you **ARE** in the military and would like to **WAIVE** your rights under the Servicemembers' Civil Relief Act.
- This Waiver allows the Court to proceed with the guardianship process if you are unavailable because of military duties.
- If you are in the military, you **MUST** file a Waiver of Rights under the Servicemembers' Civil Relief Act, an Affidavit of Appearance **OR** an Answer. If you do not file one of the above, the Court will not schedule your Permanent Guardianship Hearing until a Waiver of Rights under the Servicemembers' Civil Relief Act is filed **OR** an attorney is appointed for you.

 **BE SPECIFIC WHEN COMPLETING THE FORMS** and make sure you respond to all of the Petitioner's grounds. **Remember**, that if you fail to respond to any allegation, the Court will assume you agree that the ground is true. When you complete a form, write in blue or black ink **AND** write neatly.

 File the forms at the Family Court **in the County where the child currently lives or in the County in which at least one parent lives.**

- In Kent and Sussex Counties you may file your papers at the Resource Centers on the first floor of the Family Court buildings.
- In New Castle County, you may file your papers at Family Court Intake on lower level one of the New Castle County Courthouse.
- If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed or e-mailed.



REMEMBER to mail a copy of all the papers that you file with the Court to the Petitioner(s). You **MUST** fill out the **Affidavit of Mailing** on the bottom of the form telling the Court that you have mailed a copy of the papers you filed to the Petitioner or the Petitioner's attorney (if there is one). If you do not mail a copy of the Answer form to the Petitioner(s), the Court **may not consider** the information on that form. If there was more than one Respondent you **MUST ALSO** mail a copy of the Answer that you file to each of the Respondents and indicate you have done so on the Affidavit of Mailing.

SECTION 2 BEGINS AFTER THE SAMPLE FORMS FOR SECTION 1.



**YOU SHOULD BEGIN SECTION 2
ONCE YOU HAVE FILED THE FORMS
IN SECTION 1.**

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

ANSWER

Petitioner

v. Respondent

Name Anne C. Smith		
Street Address 101 Oak Street		
Apt. or P.O. Box Number Apt. #123		
City Dover	State DE	Zip Code 19901
Attorney Name and Phone Number n/a		

Name Michelle Jones		
Street Address 123 State Street		
Apt. or P.O. Box Number		
City Dover	State DE	Zip Code 19901
Attorney Name and Phone Number n/a		

File Number CK04-12111
Petition Number 04-77775

The respondent hereby answers the numbered paragraphs in the pleading as follows:

I deny that Doug Smith is dependent or neglected. His father and I were both in rehab for drugs and alcohol, but I am now out of rehab and sober and I am able to care for Doug. I have not abandoned my child. Although he was living with Petitioner while I was in rehab, I continued to visit with him. I have also given the Petitioners money to help with his care.

SWORN TO AND SUBSCRIBED before
me this date:

December 15, 2005



Sign in the presence of a notary.



Michelle Jones

Respondent/Attorney

Donna King



Signed by notary or court staff.

Notary Public/Clerk of Court

A copy of this answer must be sent to all Petitioner(s). See reverse side for Affidavit of Mailing.

Fill in the Petitioner's name and
the date that you mailed him/her a
copy of the motion.

AFFIDAVIT OF MAILING



I affirm that a true and correct copy of this Answer was placed in the U.S. mail on this date, 12/15/2005 and sent to the Petitioner or the attorney address listed on the petition, being Anne C. Smith, first class postage pre-paid.



Sign in the
presence of
a notary.



Michelle Jones

Respondent/Attorney

SWORN TO AND SUBSCRIBED before me on this date,

March 30, 2004



Signed by notary
or court staff.

Donna King

Notary Public /Clerk of Court

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

MOTION FOR Dismissal

Fill in the title of the motion that you are filing.

Petitioner

Respondent

Name Anne C. Smith		
Street Address 101 Oak Street		
Apt. or P.O. Box Number Apt. #123		
City Dover	State DE	Zip Code 19901
Social Security Number 111-22-3333	Date of Birth 2/3/64	
Attorney Name and Phone Number n/a		

Name Michelle Jones		
Street Address 123 State Street		
Apt. or P.O. Box Number		
City Dover	State DE	Zip Code 19901
Social Security Number 787-98-6767	Date of Birth 7/13/65	
Attorney Name and Phone Number n/a		

CK04-12111

Petition Number

Fill in the type of hearing that is scheduled. This information appears on the Notice of Hearing you received in the mail.

A PROCEEDING involving Permanent Guardianship having been filed heretofore in this Court, Movant hereby moves the Court for to dismiss the Petition for Permanent Guardianship and, in support thereof, alleges the following facts:

The child has only been living in Delaware for three months. Prior to October 2005, the child lived with the Respondent in Virginia. Because the child has not resided in Delaware for at least six months, the Petition for Permanent Guardianship should be dismissed.

Describe in detail for the Court why it should grant your motion.

SWORN TO AND SUBSCRIBED
before me this date,

December 15, 2005

Donna King

Notary Public/Clerk of Court



Sign in the presence of a notary.



Michelle Jones

Movant/Attorney



Signed by notary or court staff.

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date

December 15, 2005

Anne C. Smith

pre-paid.

Fill in the Respondent's name and the date that you mailed him/her a copy of the motion.

by **Anne C. Smith** at the address listed on the petition, being **Anne C. Smith**, first class postage

SWORN TO AND SUBSCRIBED
before me this date,

December 15, 2005

Donna King

Notary Public/Clerk of Court



Sign in the presence of a notary.



Michelle Jones

Movant/Attorney



Signed by notary or court staff.

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

CONSENT ORDER-PERMANENT GUARDIAN OF THE PERSON

Petitioner

Name Anne C. Smith		
Street Address 101 Oak Street		
Apt. or P.O. Box Number Apartment #123		
City Dover	State DE	Zip Code 19901
Date of Birth 2/3/1964	Social Security # 111-22-3333	

Respondent

Name Michelle Jones		
Street Address 123 State Street		
Apt. or P.O. Box Number		
City Dover	State DE	Zip Code 19901
Date of Birth 3/14/1964	Social security # 222-33-4444	

File Number:

Case Number:

Petitioner

Name Scott R. Smith		
Street Address 101 Oak Street		
Apt. or P.O. Box Number Apartment #123		
City Dover	State DE	Zip Code 19901
Date of Birth 3/14/1964	Social Security # 333-44-5555	

Respondent

Name Steven Harding		
Street Address 123 Main Street		
Apt. or P.O. Box Number		
City Dover	State DE	Zip Code 19901
Date of Birth 9/14/1969	Social security # 666-77-8888	

IN THE INTEREST OF the following child(ren):

Doug A. Smith

Name

10/14/1991

DOB

The parties in the above entitled cause agree upon the following arrangement and do consent to the entry of an Order providing for same:

PERMANENT GUARDIANSHIP AWARDED TO: Anne and Scott Smith (Aunt and Uncle)

Name and Relationship

101 Oak Street, Apartment #123

Dover, DE 19901

Address

I understand the importance of my decision and fully realize the effects of granting permanent guardianship of my child to the above-named individuals;

I understand that I retain the following rights:

- a. The right to visitation, contact and information as ordered by the court;
- b. The right to inheritance by and from the child; AND
- c. The right to consent to termination of parental rights and/or adoption of the child;

I understand that I may still have the primary responsibility to support my child financially;

I understand that after this consent is signed by me and confirmed, I may not petition the Court to modify or terminate the Permanent Guardianship;

I know and understand that I have the right to be served with a copy of the petition for permanent guardianship, and have a hearing on that petition. I understand that the Family Court may conduct a hearing on this matter. I hereby waive my right to service and any notice of such hearing by checking the following box ☒;

I know that I will receive notice of the final order of the Court only if I check the following box ☒.

I have received a copy of my signed consent; and

I have signed this consent voluntarily and of my own free will. I have neither been promised nor received any money or anything else of value in exchange for this consent.


Respondent(s) shall have visitation as follows:

Describe the visitation schedule you have agreed upon in detail.

Mother shall have visitation with the children every other weekend beginning the first weekend in January 2006. Mother will pick up the children from school on Friday afternoon and return the children to Aunt & Uncle's home by 4pm on Sunday.

Father shall have visitation with the children every other weekend beginning the second weekend in January, 2006. Father shall pick up the children from school on Friday afternoon and return the children to Aunt & Uncle's home by 4pm on Sunday.

BE IT REMEMBERED, that on this date December 15, 2005, Anne Smith and Scott Smith ("Petitioner(s)"), who, being duly sworn by me according to the law personally appeared before me, a Notary Public for the State and County declared above, did depose and say: We, the undersigned, hereby agree upon the following permanent guardianship agreement for the above-named child. We signed this consent agreement voluntarily and of our own free will.

<u><i>Doug Jones</i></u> Minor (if over 14)		<u><i>Anne Smith</i></u> Petitioner	<u><i>Scott Smith</i></u> Petitioner
<u><i>Michelle Jones</i></u> Respondent		<u><i>Steven Harding</i></u> Respondent	

All parties must sign in the presence of a notary.

Signed by notary or Court staff

SWORN TO AND SUBSCRIBED before me this date 12/15/2005.

Donna King
 Notary Public

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

Anne C. Smith

Petitioner,

and

Michelle Jones

Respondent,

File No.: _____

You must file a separate form for each Respondent

WAIVER OF RIGHTS UNDER THE "SERVICEMEMBERS CIVIL RELIEF ACT"

STATE OF DELAWARE

Kent

COUNTY

Write the county in which you are filing.

ss. _____

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, December 15, 2005, personally appeared before me, a Notary Public for the State of Delaware in the County declared above, Michelle Jones, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Respondent in the above captioned civil proceeding.
2. That Affiant is active duty in the United States military; and
3. The Affiant waives his/her rights under the "Servicemembers Civil Relief Act" so acknowledges that he/she, or his/her attorney, will be required to appear at all legal proceedings associated with the above captioned case.

The "Affiant" is the Respondent. ONLY the Respondent may complete this form. If you are the Petitioner in this proceeding, you may not fill out this form.



Sign in the presence of a notary or court staff.

Michelle Jones

Respondent ("Affiant")

SWORN TO AND SUBSCRIBED before me this date,

December 15, 2005



Signed by notary or court staff.

Donna Young

Notary Public or Clerk of Court

Section 2

SOCIAL STUDY AND REPORT

For Permanent Guardianship, a Social Study and Report is Mandatory.



A Social Study and Report is a report that provides detailed information about the Petitioner and the child which will **help the Court to determine whether the Petitioner should become the child's permanent guardian**. A worker from a child-placing agency will talk to all of the people involved with the case including you, the Petitioner and the child. The worker will then write a report and submit it to the Court. The report will include information about the following:

- The child and the child's background;
- The proposed guardian, and the home where the child will be living;
- The child's physical and mental condition;
- The suitability of the placement;
- Whether all of the requirements under Delaware law have been met; **AND**
- The agency's recommendation regarding whether the permanent guardianship should be granted.

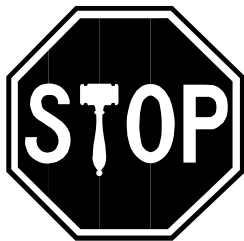
Because the Social Study and Report must contain a lot of information, the worker investigating and preparing the report will probably need to get some information from you. The worker will likely ask you for the **names of people** that he/she can speak with to find out more information about **you**, the **child** and the **child's situation**. Furthermore, the worker may want to **visit your home**. The worker may also ask you to provide him/her with **documents and papers** that are needed to prepare the report. It is **VERY** important that you cooperate with the worker and comply with his/her requests to the best of your ability.

Remember, that the information in the report will guide the Court when deciding whether the Petitioner should be awarded guardianship.



THE PETITIONER must **select** a licensed child-placing agency to do the Social Report and Study. The Petitioner must then complete an Order of Reference and the Court will issue an Order to the agency. You will receive a copy of this Order.

- The agency preparing the Social Study and Report has 4 months from the date that the Court orders that the Social Study and Report be conducted to file the completed Report with the Court.
- The Court may allow the agency more time to complete the Social Study and Report, but **ONLY IF** the additional time is reasonable and is to enable the agency to complete the report.



SECTION 3 WILL BEGIN NEXT.

Section 3

HEARING WITH A JUDGE

SCHEDULING THE HEARING



- A **Court Hearing** will be scheduled by the Court.

You do not need to file any additional paperwork to have your hearing scheduled. The Court will notify you when your hearing is scheduled, by mailing you a **Notice** to inform you of the time and date of the **Court Hearing**.

Some judges may schedule a **pre-trial hearing**. The purpose of this hearing is to discuss the status of your case prior to scheduling a full hearing where you will present evidence and call witnesses.



If you cannot attend the scheduled hearing you must file the following form:



Motion for Continuance (*file one original and mail one to the Petitioner*)

- Sample form may be found on page 30.
- If, once you receive your Notice, you cannot attend the hearing, you must contact the Court **IMMEDIATELY** by filing a **Motion for Continuance**. **DO NOT** call the Court. On this Motion, you must state **very specific reasons** why you cannot attend the hearing. You must have a legal and unavoidable reason for needing to reschedule the hearing. You cannot request a continuance simply because it is not convenient for you to attend the hearing on the scheduled day. Before you file the Motion for a Continuance, you must contact the Petitioner regarding the continuance and then **tell**

the Court in the Motion how the Petitioner feels about the continuance. Because the law is very strict when it comes to rescheduling hearings, these Motions are not always granted.

- You will be notified by the Court if your Motion for Continuance has been granted. **UNLESS THE COURT GRANTS YOU A CONTINUANCE, YOU MUST APPEAR AT COURT THE DAY OF YOUR SCHEDULED HEARING.** If you fail to appear at your hearing, the Court can enter an order granting the Petitioner everything that he/she wants. You would not be given any say in how the guardianship arrangement would work.

THE DAY OF THE HEARING



The Court Hearing is a Trial in front of a Judge. At the Court Hearing, you and the Petitioner will each be given an opportunity to tell your side of the case and ask witnesses questions. During the Court Hearing, the Judge expects you to follow a certain procedure. It is important that you are familiar with this procedure so you know what you are allowed to do, when you are allowed to talk, and how to tell your side of the story.



Family Court has developed a **Court Hearing Procedure Overview** that explains generally what the Court Hearing procedure is and should answer many of the questions you have about the procedure. Family Court also has developed a series of **Answers to Frequently Asked Questions on Your Court Hearing** to help you prepare and organize for your Court Hearing. It is helpful to read this information before your scheduled hearing. All Overviews and Frequently Asked Questions are available in the Resource Centers located in each courthouse.



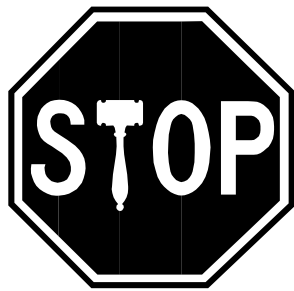
At the hearing, it is up to **YOU** to prove to the Judge **WHY** the Grounds for Permanent Guardianship are **NOT** met. These grounds can be found in Appendix “A” of this instruction booklet. Review that information before the hearing, so you are prepared to present your case to the Court. You should come to Court prepared to offer evidence regarding **the Grounds for Permanent Guardianship**.



After both sides have presented all of their evidence, one of two things can happen. The Judge can **announce his/her decision** at the end of the hearing, in which case you will leave the Courthouse knowing what the Guardianship arrangement is. **OR**, the Judge can **reserve decision**. When the Judge reserves decision, he/she considers all of the information presented during

the hearing and issues a written order explaining the guardianship arrangement sometime after the hearing. Regardless of how the Judge issues the order, you should receive a copy of the Judge's decision, or the Court Order, in the mail.

Once the Court has entered a Permanent Guardianship Order, you and the Respondent(s) should follow the terms of the Order. In other words you should do what the Order tells you to do. The Court will not enforce any agreements made by the parties that are not in a Court Order. If circumstances change, you and the Respondent(s) can change the Order by filing the proper petition. See Section 4 for information about when a guardianship order can be changed.



**Section 4 will begin
after the Sample Form
for Section 3.**

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

MOTION FOR Continuance

Fill in the title of the motion that you are filing.

Petitioner

Respondent

Name Anne C. Smith		
Street Address 101 Oak Street		
Apt. or P.O. Box Number Apt. # 123		
City Dover	State DE	Zip Code 19901
Social Security Number 111-22-333	Date of Birth 2/3/64	
Attorney Name and Phone Number n/a		

Name Michelle Jones		
Street Address 490 Pine Street		
Apt. or P.O. Box Number		
City Wilmington	State DE	Zip Code 19899
Social Security Number 787-98		
Attorney Name and Phone Number n/a		

File Number CK04-12111
Petition Number

Fill in the type of hearing that is scheduled. This information appears on the Notice of Hearing you received in the mail.

A PROCEEDING involving **Permanent Guardianship** having been instituted in this Court, Movant hereby moves the Court for **a continuance** and, in support thereof, alleges the following facts:

The Respondent's daughter, Ashley Jones, has suffered from severe tonsillitis. She is scheduled for surgery on January 25, 2006, the date of the parties' guardianship hearing. I request that the Court grant a continuance so that I can be with my daughter during surgery. I have contacted all Petitioners and they are in agreement that a continuance should be granted.

Describe in detail for the Court why it should grant your motion. Tell the Court how the other party feels about your request.

SWORN TO AND SUBSCRIBED
before me this date,

Sign in the presence of a notary.

December 15, 2005

Michelle Jones

Movant/Attorney

Donna King
Notary Public/Clerk of Court

Signed by notary or court staff.

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date **12/15/2005** by **Anne C. Smith** at the address listed on the petition, being _____, first class postage pre-paid.

Fill in the Respondent's name and the date that you mailed him/her a copy of the motion.

SWORN TO AND SUBSCRIBED
before me this date,

Sign in the presence of a notary.

December 15, 2005

Michelle Jones

Movant/Attorney

Donna King
Notary Public/Clerk of Court

Signed by notary or court staff.

Section 4

CHANGING AND ENDING PERMANENT GUARDIANSHIP

A parent may not petition the Court to change or terminate a Permanent Guardianship once it is granted. Once the Court enters a Permanent Guardianship Order, it will only be changed or ended if there is a substantial change in circumstances or if the change or termination is in the best interests of the child. In other words, once you become the permanent guardian of a child, you will continue to be that child's permanent guardian until one of the following occurs:

- The child dies;
- The guardian dies;
- The child is adopted;
- The child turns 18 years old; **OR**
- The Court determines that the Order should end based on the best interests standard or a substantial change in circumstances.

APPENDIX

A

Grounds for Permanent Guardianship

1. The parent(s) of the child, or the person(s) or organization holding parental rights over such child agree (consent) that this Petition should be granted.
2. Respondent has abandoned the child **AND** intended to abandon the child as evidenced by the fact that:
 - a. The child is younger than 6 months old and at the time of filing this Petition, Respondent did not do ANY of the following:
 - Pay reasonable prenatal, natal and postnatal expenses in accordance with Respondent's financial means; AND
 - Visit regularly with the child; AND
 - Manifest (show) an ability and willingness to assume legal and physical custody of the child (this third reason applies if the child was not in the physical custody of the other parent).
 - b. The child is at least 6 months old at the time of filing this Petition and for at least six consecutive months (six months in a row) during the year immediately before filing the Petition, Respondent(s) did not do ANY of the following:
 - Make reasonable and consistent payments in accordance with Respondent's financial means, for support of the child; AND
 - Communicate or visit regularly with the child; AND
 - Manifest (show) the ability and willingness to assume legal and physical custody of the child (this third reason applies if the child was not in the physical custody of the other parent).
 - c. The child is younger than 6 months old at the time of filing this Petition and Respondent has placed the child in circumstances leaving the child in substantial risk of injury or death and therefore has manifested (shown) the unwillingness to exercise parental rights
3. Respondent has abandoned the child BUT did not intend to abandon the child because:
 - a. For 12 consecutive months (12 months in a row) in the 18 months before filing this Petition, Respondent did not do ANY of the following:
 - Communicate or visit regularly with the child; AND
 - File or pursue a pending Petition to establish paternity or to establish the right to have contact or visitation with the child; AND
 - Manifest (show) the ability and willingness to assume legal and physical custody of the child (this third reason applies if the child was not in the physical custody of the other parent).

AND one of the below applies

- b. The child is not in the legal and physical custody of the other parent and Respondent is not able or willing promptly to assume legal and physical custody of the child, and to pay for the child's support, in accordance with Respondent's financial means.
 - c. Placing the child in Respondent's legal and physical custody would pose a risk of substantial harm to the physical or psychological well being of the child. Respondent is unfit to maintain a relationship of "parent and child" with the child because of any of the following reasons:
 - i. The circumstances of the child's conception; OR
 - ii. Respondent's behavior during the mother's pregnancy; OR
 - iii. Respondent's behavior after the child was born; OR
 - iv. Respondent's behavior with respect to other children.
 - d. Failure to grant the Petition for Permanent Guardianship would be detrimental to the child.
- 4. The parent(s) of the child or any person(s) holding parental rights over such child are found mentally incompetent and therefore, are unable to discharge parental responsibilities in the foreseeable future. (The Court will select 2 qualified psychiatrists to form an opinion regarding mental incompetence and inability to discharge parental responsibilities. The Court also will appoint a licensed attorney as guardian ad litem to represent the alleged incompetent's interests in the proceeding)
- 5. Respondent has been found by a Court of competent jurisdiction to have:
 - a. Committed a felony level offense as described in subchapter II of Chapter 5 of Title 11 against the person in which the victim was a child;
 - b. Aided or abetted, attempted, conspired or solicited to commit a felony level offense as described in subchapter II of Chapter 5 of Title 11 against the person in which the victim was a child;
 - c. Committed or attempted to commit the offense of Dealing in Children as set forth in § 1100 of Title 11.
 - d. Committed the felony level offense of endangering the welfare of a child as set forth in § 1102 of Title 11.
- 6. The parent(s) of the child, or any person(s) holding parental rights over the child, are not able or have failed to plan adequately for the child's physical needs or mental and emotional health and development, and 1 or more of the following conditions has been met:
 - a. If the child is in the care of the Department or a licensed agency:
 - i. The child has been in the care of the Department of licensed agency for a period of one year, or if the child has come into care as an infant, a period of 6 months, or there is a history of previous placement(s) of this child;

- ii. There is a history of neglect, abuse, or lack of care of the child or other children by Respondent;
 - iii. Respondent is incapable of discharging parental responsibilities due to extended or repeated incarceration;
 - iv. Respondent is not able or willing to assume promptly legal and physical custody of the child, and to pay for the child's support, in accordance with Respondent's financial means.
 - v. Failure to grant the Petition for Permanent Guardianship will result in continued emotional instability or physical risk to the child.
 - b. If a blood relative is seeking permanent guardianship
 - i. The child has resided in the home of the blood relative for a period of at least 1 year, or in the case of an infant, a period of 6 months
 - ii. Respondent is incapable of discharging parental responsibilities, and there appears to be little likelihood that Respondent will be able to discharge such parental responsibilities in the near future.
7. Respondent's parental rights over a sibling (brother, sister, half-brother, half-sister) of the child who is the subject of the Petition have been involuntarily terminated in a prior proceeding.
 8. The parent has subjected the child to torture, chronic abuse, sexual abuse, and/or life-threatening abuse.
 9. The child has suffered unexplained serious physical injury under such circumstances as would indicate that such injuries resulted from the intentional conduct or willful neglect of the parent.